



Hamilton Square 600 14<sup>th</sup> Street NW Suite 750 Washington DC 20005  
T> 202-220-0400 F > 202-220-0401

23 July, 2002

Mr. Alexander P. Starr  
Chief  
Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Via Electronic Mail and Fax to 202-418-0435**

Dear Mr. Starr:

Covad Communications Company (Covad), by its attorney, hereby respectfully requests the assistance of the Enforcement Bureau to resolve an active dispute with Verizon related to Verizon's ongoing refusal to provide Covad with non-discriminatory access to the DS-1 capable loop UNE. Specifically, for the reasons set out below, Covad believes this dispute is appropriate for resolution on the Commission's Accelerated Docket. Because Verizon has refused in negotiations with Covad to alter the policies set out below, Covad requests pre-complaint mediation, pursuant to section 1.730 *et seq.* of the Commission's rules. Should that mediation fail, Covad requests that the Bureau treat this letter as a request for inclusion of this matter on the Bureau's Accelerated Docket.

This dispute is appropriate for accelerated docket resolution because Covad satisfies each of the criteria set out in section 1.730(e) of the Commission's rules:

- (1) Whether it appears that the parties to the dispute have exhausted the reasonable opportunities for settlement during the staff-supervised settlement discussions.
  - Staff-supervised settlement is not yet completed, but it appears clear that the fundamental issue in dispute – whether Verizon is permitted to reject UNE DS-1 loop orders because the order requires the provision of attachments to the loop – will likely not be resolved in mediation. Verizon believes the Commission's rules entitle it to limit UNE availability in such a manner, and Covad believes Verizon's policy violates the Act and the Commission's rules. Nonetheless, Covad respectfully requests the assistance of the Enforcement Bureau to resolve this dispute via pre-complaint mediation, pursuant to the section 1.730 *et seq* of the Commission's rules.
- (2) Whether the expedited resolution of a particular dispute or category of disputes appears likely to advance competition in the telecommunications market.

- As set forth in the attached materials, Covad has suffered the loss of approximately 46% of its prospective T1 customers as a result of Verizon's policy, and it is likely that any competitive carrier seeking DS-1 loop UNEs will have suffered similar losses. The Act and the Commission's implementing UNE rules guarantee competitive entrants' right to purchase and obtain unbundled network elements from Verizon, including DS-1 loops. Furthermore, the Commission's rules and orders include the obligation of ILECs, to the extent technically feasible, to take the measures necessary to provide competitors with access to unbundled network elements, including the DS-1 loop. The expedited resolution of this dispute will advance competition in the telecommunications market by securing the full extent of competitors' rights to access the DS-1 loop UNE.
- (3) Whether the issues in the proceeding appear suited for decision under the constraints of the Accelerated Docket. This factor may entail, inter alia, examination of the number of distinct issues raised in a proceeding, the likely complexity of the necessary discovery, and whether the complainant bifurcates any damages claims for decision in a separate proceeding.
- Covad presents a single issue in this request for accelerated docket treatment. Specifically, that issue is whether Verizon's policy of rejecting DS-1 loop UNE orders based on the need to provide attachments to the loop violates the Act and the Commission's implementing UNE rules. In addition, factual inquiry in this matter will be limited. Specifically, the Commission will need to establish the parameters of Verizon policies which lead to the rejection of DS-1 loop UNE orders in Verizon's wholesale center, as well as any technical basis for Verizon's decision to reject such orders.
- (4) Whether the complainant states a claim for violation of the Act, or Commission rule or order that falls within the Commission's jurisdiction.
- As set forth below, Verizon is in violation of section 251(c)(3) of the Act, as well as sections 51.319(a) and 51.321 of the Commission's rules.
- (5) Whether it appears that inclusion of a proceeding on the Accelerated Docket would be unfair to one party because of an overwhelming disparity in the parties' resources.
- Although it is clear that Verizon has an overwhelming advantage in resources, Covad has no choice but to seek accelerated resolution of a matter that has already prevented Covad from providing T1 services to approximately 46% of the customers that have sought service from Covad.
- (6) Such other factors as the Commission staff, within its substantial discretion, may deem appropriate and conducive to the prompt and fair adjudication of complaint proceedings.

- Covad is losing customers every day as Verizon's unlawful "no facilities" policy results in daily order cancellations and order rejections. The Commission's expedited resolution of this complaint will not only serve to ensure swift enforcement against violation of the Act and the Commission's rules, it will also serve the public interest by providing consumers the option of competitive service offerings that Verizon's policy prevents.

The immediate action of the Enforcement Bureau is necessary in this instance, given Verizon's documented refusal to provide Covad with non-discriminatory access to the DS-1 capable loop UNE. Given the harm that Covad continues to suffer from Verizon's enforcement of its policy, Covad respectfully asks the Commission to seek a voluntary commitment from Verizon to desist from enforcing its policy and to provision Covad's UNE DS-1 loop orders where doing so requires Verizon to provision attached electronics.<sup>1</sup> In the alternative, should Verizon refuse, Covad asks the Commission to issue a standstill order of its own to enjoin Verizon's enforcement of this policy.

On March 30, 2001, Verizon informed Covad that, in some circumstances (determined by Verizon), it would not provide to Covad loops capable of carrying DS-1 circuits.<sup>2</sup> Verizon subsequently clarified its position by letter dated April 5, 2001, stating that it was under no obligation to attach electronics to existing loop facilities to render them capable of carrying DS-1 circuits.<sup>3</sup> Verizon stated that, when it receives a CLEC order for a DS-1 loop, its practice is to check to see whether the required common equipment is installed in the central office and has available ports or slots on it. Verizon stated that it rejects CLEC orders unless these conditions are met. Furthermore, Verizon stated that it would not procure any central office equipment to provision the loop. Thus, Verizon articulated to Covad its firm policy of rejecting any Covad UNE DS-1 loop order submitted, where it must attach central office equipment to the UNE loop. Subsequently, Covad met with Verizon to explore the reasons for Verizon's rejection of several Covad UNE DS-1 loop orders. In the course of those meetings, Covad discovered several circumstances in which Verizon's practice was to refuse to provision loops to Covad. Specifically, Covad discovered that Verizon was rejecting Covad's orders where provisioning the loop would require the addition of doubler cases, central office shelf

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<sup>1</sup> Covad was notified via letter on March 30, 2001, of Verizon's policies regarding UNE DS-1 capable loops. Covad attempted to negotiate with Verizon, but those negotiations were fruitless, and Verizon informed Covad definitively on April 5, 2001, that it would not change its policy. Covad subsequently attempted to negotiate these issues again with Verizon on May 21, 2002 and May 24, 2002, without any resulting change in Verizon's policy.

<sup>2</sup> Letter dated March 30, 2001, from Steven Hartmann, Senior Counsel, Verizon, to Jason Oxman, Assistant General Counsel, Covad Communications Company (Hartmann March 30<sup>th</sup> Letter) (Appended to this letter as Appendix A).

<sup>3</sup> Letter dated April 5, 2001, from Steven Hartmann, Senior Counsel, Verizon, to Jason Oxman, Assistant General Counsel, Covad Communications Company (Hartmann April 5<sup>h</sup> Letter) (Appended to this letter as Appendix B).

space, repeaters, riser cable, or other equipment to the loop.<sup>4</sup> Verizon's policy has caused and continues to cause Verizon to reject Covad's UNE DS-1 loop orders unlawfully. Covad has reason to believe that, as of July 15, 2002, approximately 46% of its UNE DS-1 orders were rejected unlawfully because of Verizon's determination that there were "no facilities."<sup>5</sup>

In support of its policy, Verizon states that the 1996 Act only requires incumbent carriers to unbundle their existing network, not to construct new facilities. Verizon also argues that the definition of the loop network element includes only electronics already attached to the loop. Furthermore, according to Verizon, its obligation to provision loops that pass a DS-1 signal rate includes only the obligation to remove devices from the loop, and does not include the attachment of devices to the loop that are not already in place.<sup>6</sup> Verizon's policy is based on an erroneous reading of the Commission's rules and orders, and will cause Covad to suffer severe harm if it is not immediately reversed.<sup>7</sup>

The Commission has repeatedly stated that Verizon must take affirmative steps to provision loops capable of carrying DS-1 signals

The Commission has on numerous occasions addressed the obligations of incumbent LECs to take affirmative steps to provision loops for requesting carriers, including UNE loops capable of carrying DS-1 level signals. As an initial matter, there should be no confusion that DS-1 capable loops are among the loops incumbent LECs must unbundle for requesting carriers. The Commission's *Local Competition Order* made this clear:

We further conclude that the local loop element should be defined as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises. This definition includes, for example, two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to

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<sup>4</sup> In its negotiations with Verizon over this issue, Covad brought to Verizon's attention specific examples of orders for UNE DS-1 loops it had unlawfully rejected. See "Examples of Rejected Covad UNE DS-1 Orders" (Appended to this letter as Appendix C).

<sup>5</sup> See chart entitled "Covad T-1 Orders YTD through 7-15-02" (Appended to this letter as Appendix D). This data includes Covad's orders that have been provisioned (completed), as well as Covad's orders that have been rejected for "no facilities."

<sup>6</sup> Subsequent to its correspondence to Covad, Verizon issued a general statement of its policy on unbundling DS-1 and DS-3 UNE loops. See "DS1 and DS3 Unbundled Network Elements Policy," July 24, 2001 (Appended to this letter as Appendix E).

<sup>7</sup> Clearly, the Commission's enforcement mechanisms do not require Covad to wait until Verizon has rejected large volumes of Covad's UNE orders before proceeding in this matter. As set out in the attached correspondence from Verizon, the incumbent LEC has detailed its policy sufficiently to permit the Commission to find that policy in clear violation of its rules. Covad cannot be forced to continue suffering the harm of lost customers and revenue ensuing from Verizon's anticompetitive behavior.

transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.<sup>8</sup>

The Commission then addressed the requirement for incumbent LECs, such as Verizon, to take affirmative steps to condition loops to carry digital signals:

Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. Thus, we reject BellSouth's position that requesting carriers "take the LEC networks as they find them" with respect to unbundled network elements. As discussed above, some modification of incumbent LEC facilities, such as loop conditioning, is encompassed within the duty imposed by section 251(c)(3).<sup>9</sup>

And indeed, the Commission was forced once again to reject GTE (now Verizon's) argument that it need only provide a loop as it exists in its network:

GTE contends that the Eighth Circuit, in the *Iowa Utils. Bd. v. FCC* decision, overturned the rules established in the *Local Competition First Report and Order* that required incumbents to provide competing carriers with conditioned loops capable of supporting advanced services even where the incumbent is not itself providing advanced services to those customers. We disagree.<sup>10</sup>

Verizon now continues to maintain the same position that the FCC has rejected on three occasions. Verizon claims that it has no obligation to provide an unbundled DS-1 capable loop if a DS-1 capable loop is not already in place to an end user premises. Verizon claims to be aware of neither legal obligations under sections 251 and 252 of the Act nor contractual obligations that require it to build out DS-1 loops for Covad and provide them at UNE rates.<sup>11</sup> To clarify what Verizon means by "build out DS-1 loops for Covad," Verizon succinctly states its "obligation to provision DS-1 loops at UNE rates depends on whether or not such loops are currently available."<sup>12</sup> That is not true. The only question Verizon is entitled to ask itself when Covad requests a DS-1 capable loop is this: is it technically feasible to provision a loop that provides DS-1 capabilities to

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<sup>8</sup> *Local Competition First Report and Order* at para. 380.

<sup>9</sup> *Local Competition First Report and Order* at para. 382.

<sup>10</sup> *UNE Remand Order* at para. 173.

<sup>11</sup> Hartmann March 30<sup>th</sup> Letter at 1.

<sup>12</sup> Hartmann March 30<sup>th</sup> Letter at 1.

the address requested by Covad? If the answer is yes, then Verizon must provision a DS-1 capable loop.

Fortunately, Verizon has already answered that simple question for the Commission. By providing a retail DS-1 access service instead of the UNE DS-1 loop that Covad ordered, Verizon necessarily concedes that it is technically feasible to unbundle a loop that supports DS-1 digital signals to the address requested by Covad. Verizon simply prefers to provide that loop on Covad's behalf only via Verizon's retail arm, not its wholesale arm. Therefore, Verizon is not only denying Covad access to the UNEs to which it is entitled by law, but is also engaging in a discriminatory practice of providing DS-1 capable loops for its retail arm while refusing to do so for requesting carriers.

Verizon cites an interconnection agreement with Covad as further evidence to support its claim that it need not provide DS-1 capable loops. In particular, Verizon cites certain provisions of Article VII, Section 2.3 of the Covad/Verizon Texas Interconnection agreement, which provides:

Covad may connect to the UNEs listed in Article VII, Section 2.1 that Covad chooses. The UNEs must be Currently Available and connection to them must be technically viable.

Verizon then notes that the term "Currently Available" is defined in Article II, Section 1.22 as:

[E]xisting as part of GTE's network at the time of the requested order or service and does not include any service, feature, function, or capability that GTE either does not provide to itself or to its own end users, or does not have the capability to provide.

Verizon fails to mention, however, the most important provision of that agreement; namely, the part where Covad is entitled to order an unbundled DS-1 loop:

4.2.5 "DS-1 loop - will support a digital transmission rate of 1.544 Mbps. The DS-1 loop will have no bridge taps or load coils and will employ special line treatment. DS-1 loops will include midspan line repeaters where required, office terminating repeaters, and DSX cross connects."

Verizon clearly does not dispute that the copper loop is available at the time Covad orders a DS-1 capable loop; indeed, a retail access service is offered to Covad in lieu of the UNE loop. Verizon's argument appears to be that, to the extent the "midspan line repeaters where required, office terminating repeaters, and DSX cross connects" are not already in place over a loop for DS-1 capability, Verizon believes it has no obligation to provide the requested UNE. Having contractually bound itself, however, to provide DS-1 loops, including necessary provisioning work, and having failed repeatedly in its

efforts to convince the FCC that it need not unbundle loops where the finished loop product is not already in place, Verizon cannot maintain its current position.

Furthermore, Verizon's argument that its obligation to provision conditioned loops only extends to the removal of attached devices is patently absurd. Verizon relies on Commission Rule 51.319(a)(3)(i), which, as Verizon acknowledges, requires it to remove from unbundled loops attached devices that diminish their capability to provide high-speed telecommunications services. What Verizon fails to explain is how this requirement relieves Verizon of its obligations to provide competitors with access to those unbundled loops in the first place, including DS-1 loops. The absurdity of Verizon's position that it is only required to "remove" things from loops is further belied by what Verizon is required to do on a daily basis to provide unbundled loops to requesting carriers. For example, loop provisioning often requires the connection of feeder and distribution cable, the installation of NIDs to accommodate additional loop terminations, and the provision of cross-connects to collocation arrangements.<sup>13</sup>

Verizon's position, brought before the Commission and the courts time and time again, is that it has no obligation to provide competitors with access to an "unbuilt superior network."<sup>14</sup> But Covad does not seek an unbuilt network; rather, Covad seeks Verizon to provision unbundled loops using Verizon's existing loop facilities, in a manner that allows Covad to use the full features, functions and capabilities of those loops. The fact is that only Verizon has access to the loop plant to render it DS-1 capable. Verizon's suggestion that Covad seeks access to an unbuilt network is belied by Verizon's willingness to provide loops supporting DS-1 data rates as part of a retail service. What Verizon seeks is to be the only player in town able to provide DS-1 level services for its own customers, while competitors are permanently relegated to the status of second-class provider. The Commission cannot accept such a position.

Verizon is in violation of the Commission's requirement that it provide unbundled access to DS-1 loops to the extent technically feasible.<sup>15</sup> Because Verizon does not claim that it is not technically feasible to provision the loops Covad has requested for DS-1 capability, Verizon must provide the loops that Covad requests. Covad has and continues to suffer serious harm because of Verizon's refusal to provide UNE loops as required by law.

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<sup>13</sup> In this connection, the Commission should note that Verizon's obligation to provide cross-connects between collocation arrangements was recently upheld by the D.C. Circuit as part of Verizon's section 201(b) obligation to provide "charges, practices, classifications and regulations for and in connection with [a] communications service" that are "just and reasonable." *See Verizon v. FCC*, 2002 WL 1310605 (D.C. Cir., decided June 18, 2002).

<sup>14</sup> Hartmann April 5<sup>th</sup> Letter at 3.

<sup>15</sup> *See* 47 C.F.R. § 51.319(a) (requiring unbundling of local loops, including DS-1 loops); 51.321 (requiring ILECs to provide any technically feasible method of access to UNEs).

The Commission should inquire into Verizon's retail T1 provisioning practices to determine the full extent of Verizon's anticompetitive behavior.

As part of its inquiry in this matter, the Commission should take note of the simple fact that Covad and Verizon are retail competitors for T1 services. In particular, Covad's T1 offerings are a less expensive alternative to Verizon's legacy T1 services. Verizon thus has a strong incentive to deny Covad the ability to offer its competing T1 services. By enacting its policy of rejecting UNE DS-1 loop orders wherever it must attach equipment to the loop, Verizon is raising the bar for competitive T1 offerings higher than for its own T1 offerings.

In conclusion, Verizon's policy for UNE DS-1 loops has cost and will continue to cost Covad untold customers as a result of Verizon's rejection of Covad's UNE orders. Verizon's policy is not rooted in any demonstration of technical infeasibility and is therefore legally untenable. The Bureau must act immediately to prevent Verizon from using this policy to deny Covad access to the UNEs to which it is entitled by law. Covad respectfully requests the rapid intervention of the Commission in this matter.

Respectfully submitted,

/s/ Praveen Goyal

Praveen Goyal  
Senior Counsel for Government &  
Regulatory Affairs  
Covad Communications Company  
600 14<sup>th</sup> Street, N.W., Suite 750  
Washington, D.C. 20005  
202-220-0422 (voice)  
202-220-0401 (fax)  
pgoyal@covad.com

cc: Radhika Karmarkar, Deputy Chief, Market Disputes Resolution Division,  
via email at rkarmark@fcc.gov  
Marie Breslin, Verizon, via email at marie.t.breslin@verizon.com



## APPENDIX A – Verizon 3/30/01 letter to Covad

Steven H. Hartmann  
Senior Counsel  
Carrier Relations



1320 North Court House Road  
8<sup>th</sup> Floor  
Arlington, Virginia 22201

Phone: 703-974-3940  
Fax: 703-974-0665  
Email: Steven.H.Hartmann@verizon.com

**March 30, 2001**

**VIA E-MAIL AND FIRST CLASS MAIL**

Jason Oxman, Esq.  
Covad Communications Company  
600 14<sup>th</sup> St., N.W.  
Suite 750  
Washington, DC 20005

Dear Jason:

Scott Randolph asked me to respond to your e-mail dated March 28 regarding Verizon West's alleged failure to provide Covad with unbundled DS-1s in compliance with Verizon West's obligations. I have a couple of related responses. First, I'm puzzled by your contention that Verizon West "refuse[s] to provision an unbundled DS-1 loop unless a retail DSL customer is served over that loop already." Verizon West's obligation to provision DS-1 loops at UNE rates depends on whether or not such loops are currently available in Verizon West's network at the time of the request. This obligation has nothing to do with whether or not a retail customer or a DSL customer is served over the loop. If you can provide examples of the instances you refer to, we will investigate them.

Second, if I understand the central point of your complaint correctly, it is that Covad believes Verizon must provide Covad with DS-1 loops (meaning copper loops conditioned to handle DS-1 signals, plus the related electronics at each end) at UNE rates regardless of whether or not the conditioned copper loops and related electronics are available in Verizon West's network at the time of Covad's request. We disagree. I am aware of neither legal obligations under sections 251 and 252 of the Act nor contractual obligations that require Verizon West to build out DS-1 loops for Covad and provide them at UNE rates.

Regarding Verizon West's legal responsibilities, I would ask that you provide the basis for your assertion that sections 251, 252, and the FCC's rules compel us to install DS-1 loops and provide them on an unbundled basis.

Regarding Verizon West's contractual responsibilities, I would ask that you similarly describe the basis for your position, particularly as I believe the interconnection agreements support Verizon's position, not Covad's. The Texas interconnection agreement between Covad and GTE is illustrative. Article VII, Section 2.3 (captioned "Connection to Unbundled Elements") provides:

Covad may connect to the UNEs listed in Article VII, Section 2.1 that Covad chooses. The UNEs must be Currently Available and connection to them must be technically viable.

The term "Currently Available" is defined in Article II, Section 1.22 as:

[E]xisting as part of GTE's network at the time of the requested order or service and does not include any service, feature, function, or capability that GTE either does not provide to itself or to its own end users, or does not have the capability to provide.

Read together, these two provisions make clear that Verizon West, f/k/a GTE, is not required to build new facilities to satisfy a Covad request for unbundled network elements, including DS-1 loops.

Given our fundamental disagreement over the extent of Verizon West's legal obligations, Verizon West is not willing to agree to your demands that it (i) immediate convert existing DS-1 special access circuits to UNE DS-1 circuits, or (ii) certify to Covad that it will make DS-1 loops available at UNE rates where such loops are not available in Verizon West's network. Of course, if you can explain how the law and the contracts support your position, Verizon stands willing to reconsider its positions.

Sincerely,

Steven H. Hartmann

cc: Scott Randolph

## APPENDIX B – Verizon 4/5/01 letter to Covad

Steven H. Hartmann  
Senior Counsel  
Carrier Relations



1320 North Court House Road  
8<sup>th</sup> Floor  
Arlington, Virginia 22201

Phone: 703-974-3940  
Fax: 703-974-0665  
Email: Steven.H.Hartmann@verizon.com

**April 5, 2001**

**VIA E-MAIL AND FIRST CLASS MAIL**

Jason Oxman, Esq.  
Covad Communications Company  
600 14<sup>th</sup> St., N.W.  
Suite 750  
Washington, DC 20005

Dear Jason:

I write in response to your letter dated Monday, April 2. Before getting into the substance of my response, I note that in your letter you requested that I respond by close of business on Tuesday, April 3, failing which Covad would immediately refer this matter to the FCC. Similarly, in your initial e-mail on this subject, which you sent to Scott Randolph and me after business hours on Wednesday, March 28, you demanded a written response no later than Friday, March 30, which I provided. While I know you've indicated that this is an important issue to Covad, the deadlines you've included for Verizon's response have not been reasonable. I'm willing try to resolve this matter as quickly as possible, but I would ask that Covad allow us reasonable time to respond to its communications.

In my letter of March 30, I asked that you provide examples of instances in which Covad believes Verizon West improperly rejected orders for unbundled DS1 loops, and that you explain Covad's contention that sections 251, 252 and the FCC's rules compel Verizon to build DS1 loops and provide them on an unbundled basis. Although you've now provided an explanation of Covad's legal assertions, you haven't provided the examples I requested. It's unfortunate that we don't have this information yet, as it would allow Verizon to figure out why the orders Covad is complaining about were rejected, assist the parties to clarify the issues in dispute, and hopefully allow the parties to start to quantify the number of DS1 orders regarding which we are in disagreement. Accordingly, I urge you have your company send us a partial or complete list of the unbundled DS1 loop orders at issue.

Because we don't know anything about orders Covad is complaining about, it's not possible for me to address the legal issues in a way that relates to what actually

occurred. However, I can at least respond to your general assertions regarding Verizon's legal obligations.

Concerning Verizon West's contractual obligations, I fail to see how the provision you cite from the Texas contract, Section 4.2.5, which is a description of the DS1 loop product, advances Covad's argument. Regardless of how DS1 loops are described in the Interconnection Agreement, the point is that Covad may only purchase these loops where they're "Currently Available," as that term is defined in the Agreement.

Regarding Verizon's obligations under the 1996 Act and related regulations, although I concur entirely with your assertions that (i) the local loop network element includes DS1 loops and (ii) Verizon is obligated to "condition" local loops at the request of Covad or other requesting carriers (at the requesting carrier's expense), neither of these requirements support what I understand to be Covad's principal assertion: that, pursuant to its obligation to condition loops, Verizon West must, when presented with a Covad order for an unbundled DS1 local loop, do whatever's necessary to provide Covad an unbundled DS1 loop, including construction of new facilities.

Contrary to your assertions, neither Verizon West's obligation to unbundle loops nor its obligation to condition loops requires it to attach DS1 electronics to the wire or fiber facilities that serve the end user. The FCC's definition of the local loop network element supports the position that ILECs are not required to add electronics to existing copper or fiber loop facilities. Under 47 C.F.R. § 51.319(a), ILECs must provide requesting carriers access to the local loop and subloop. Subsection 51.319(a)(1) of the FCC's regulation provides that

[t]he local loop network element is defined as "a transmission facility between a distribution frame . . . and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC. The local loop network element includes all features, functions and capabilities of such transmission facility. Those features, functions and capabilities include, but are not limited to, dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as [DSLAMs]), and line conditioning. (emphasis added)

As this provision indicates, the "features, functions and capabilities" that Covad may avail itself of include attached electronics, meaning electronics already connected to the wire or fiber, in contrast to unattached electronics, which is what Covad demands here.

The fact that Verizon West must condition wire facilities, including conditioning them so that they can pass signals at a DS1 rate, similarly does not help Covad's argument. Under Subsection 51.319(a)(3)(i) of the FCC's regulations,

Line conditioning is defined as the removal from the loop of any devices that may diminish the capability of the loop to deliver high speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to, bridge taps, low pass filters, and range extenders. (emphasis added)

Nothing in this definition, or in the FCC's related discussion in the *UNE Remand Order*, suggests that an ILEC must, as part of its line conditioning obligations, add or attach electronics to a copper or fiber facility.

More broadly, the 1996 Act only requires incumbent carriers to unbundle their existing network, not to construct network elements simply to make them available on an unbundled basis to competing carriers. As the Eighth Circuit explained, "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network - not to a yet unbuilt superior one." *Iowa Util. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), appealed on other grounds, *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 737 (1999). Here, Covad demands that Verizon West agree that it will build out its network wherever Covad demands an unbundled DS1 loop, which exceeds the scope of Verizon West's obligations under section 251.

Notwithstanding the fact that Verizon West has no legal obligation to add DS1 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1 loop, Verizon West's practice is to fill such CLEC orders as long as the central office common equipment necessary to create a DS1 loop can be accessed. When Verizon West receives an order for an unbundled DS1 loop, it checks to see if the required common equipment is installed in the central office and has available ports or slots on it. If there's capacity on this common equipment, Verizon West does the cross connection work between the common equipment and the wire or fiber facility running to the end user. At the end user's end of the wire or fiber facility, Verizon West terminates the DS1 loop in the appropriate NID.

Thus, Verizon West's existing practice goes significantly beyond its legal obligations, in that we effectively will create an unbundled DS1 loop, even where the necessary electronics are not already attached to the wire or fiber facility, as long as we can do so without having to procure additional common equipment in the central office.

In sum, under Verizon West's current practice it rejects an order for an unbundled DS1 loop only where (i) it does not have the common equipment in the central office needed to provide a DS1 loop, or (ii) there is no available wire or fiber facility between the central office and the end user. If you believe that Verizon West has rejected orders for unbundled DS1 in a manner that may have been inconsistent with this practice, please provide the order information, so that we can investigate these and address them as necessary.

Please contact me if you would like to discuss this issue further.

Sincerely,

Steven H. Hartmann

cc: Scott Randolph



## APPENDIX C – Examples of Rejected Covad UNE DS-1 Orders

## APPENDIX D – Covad T-1 Orders YTD through 7-15-02

## APPENDIX E – Verizon DS1 and DS3 UNE Policy

July 24, 2001

### **DS1 and DS3 Unbundled Network Elements Policy**

A number of carriers have recently expressed concern that Verizon is changing its policies with respect to the construction of new DS1 and DS3 Unbundled Network Elements. This is not the case. To ensure that there is no misunderstanding on this point this letter restates Verizon's policies and practices with respect to the provisioning of unbundled DS1 and DS3 network elements.

In compliance with its obligations under applicable law, Verizon will provide unbundled DS1 and DS3 facilities (loops or IOF) to requesting CLECs where existing facilities are currently available. Conversely, Verizon is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers. This policy, which is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements.

This does not mean that CLECs have no other options for obtaining requested facilities from Verizon.

In areas where Verizon has construction underway to meet anticipated future demand, Verizon's field engineers will provide a due date on CLEC orders for unbundled DS1 and DS3 network elements based on the estimated completion date of that pending job, even though no facilities are immediately available. Rigid adherence to existing policies could dictate that the field engineers reject these orders due to the lack of available facilities; but in an effort to provide a superior level of service, Verizon has chosen not to do so. In such cases, the result is that the order is filled, but the provisioning interval is longer than normal. At the same time, Verizon's wholesale customers should not confuse these discretionary efforts to provide a superior level of service with a perceived *obligation* to construct new facilities.

Moreover, although Verizon has no legal obligation to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element, Verizon's practice is to fill CLEC orders for unbundled DS1/DS3 network elements as long as the central office common equipment and equipment at end user's location necessary to create a DS1/DS3 facility can be accessed. However, Verizon will reject an order for an unbundled DS1/DS3 network element where (i) it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network element, or (ii) there is no available wire or fiber facility between the central office and the end user.

Specifically, when Verizon receives an order for an unbundled DS1/DS3 network element, Verizon's Engineering or facility assignment personnel will check to see if existing common equipment in the central office and at the end user's location has spare ports or slots. If there is capacity on this common equipment, operations personnel will perform the cross connection work between the common equipment and the wire or fiber facility running to the end user and

install the appropriate DS1/DS3 cards in the existing multiplexers. They will also correct conditions on an existing copper facility that could impact transmission characteristics. Although they will place a doubler into an existing apparatus case, they will not attach new apparatus cases to copper plant in order to condition the line for DS1 service. At the end user's end of the wire or fiber facility, Verizon will terminate the DS1/DS3 loop in the appropriate Network Interface Device (Smart Jack or Digital Cross Connect (DSX) Panel).

In addition, if Verizon responds to a CLEC request for an unbundled DS1/DS3 network element with a Firm Order Completion date (FOC), indicating that Verizon has spare facilities to complete the service request, and if Verizon subsequently finds that the proposed spare facilities are defective, Verizon will perform the work necessary to clear the defect. In the event that the defect cannot be corrected, resulting in no spare facilities, or if Verizon has indicated that there are spare facilities and Verizon subsequently finds that there are no spare facilities, Verizon will not build new facilities to complete the service request.

Finally, wholesale customers of Verizon, like its retail customers, may request Verizon to provide DS1 and DS3 services pursuant to the applicable state or federal tariffs. While these tariffs also state that Verizon is not obligated to provide service where facilities are not available, Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design practices and construction program. Even in these cases, of course, Verizon must retain the right to manage its construction program on a dynamic basis as necessary to meet both its service obligations and its obligation to manage the business in a fiscally prudent manner.

In summary, although Verizon's policies regarding the construction of new DS1 and DS3 Unbundled Network Elements remain unchanged, Verizon continues to strive to meet the requirements of its wholesale customers for unbundled DS1 and DS3 facilities in a manner that is consistent with the sound management of its business.

If you have any questions regarding Verizon's unbundled DS1/DS3 building practice, you may contact your Account Manager.